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Letter dated 19 October 1999 from the Secretary-General to the President of the Economic and Social Council

Further to my letters to you of 5 May 1999 and 21 July 1999 concerning implementation of the advisory opinion of the International Court of Justice of 29 April 1999 on the Difference relating to immunity from legal process of a Special Rapporteur of the Commission on Human Rights, I have the honour to bring the following to your attention.

You will recall that, in its resolution 1999/64, the Economic and Social Council took note of the stated commitment by the Government of Malaysia to abide by the advisory opinion, and noted in this regard that the Government had conveyed the advisory opinion to the competent judicial authorities. In the same resolution, the Economic and Social Council unanimously stressed Malaysia's obligation "to make further efforts, in order that its international obligations thereunder be given effect and Dato' Param Cumaraswamy's immunity be respected, in accordance with the advisory opinion of the International Court of Justice." In its advisory opinion of 29 April 1999, the International Court of Justice upheld the Secretary-General's finding that Dato' Param Cumaraswamy is entitled to immunity from legal process, and concluded "that the Government of Malaysia has the obligation to communicate the advisory opinion to the Malaysian courts in order that Malaysia's international obligations be given effect and Dato' Param Cumaraswamy's immunity be respected." In this regard, it should be noted that the Solicitor-General of Malaysia had concluded her statement before the International Court of Justice on 10 December 1998 by explicitly "assuring the Court that Malaysia fully recognizes the provisions of Section 30 of the General Convention, which accords binding quality to the advisory opinion of this Court."

Despite the foregoing, proceedings in the four civil suits against Dato' Param Cumaraswamy have continued in the Malaysian civil courts. Moreover, on the issue whether the courts of Malaysia should follow the advisory opinion of the ICJ, a competent judicial authority of the Malaysian courts ruled on 18 October 1999 that "the said Convention is not a final and binding authority" and proceeded to dismiss Dato' Param Cumaraswamy's application to set aside one of the suits and ordered him to file a defence for purposes of a full trial on the merits of the case.

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In his statement to the fifty-fourth regular session of the General Assembly, on 29 September 1999, the Prime Minister of Malaysia alluded to Dato' Param Cumaraswamy's case when he expressed the view that the United Nations confers upon its special rapporteurs absolute and unlimited immunity, and that the United Nations expects the Government of Malaysia to interfere with the independence of the Malaysian judiciary and thereby violate its national laws and international law.

The immunity from legal process of Special Rapporteurs, as experts on missions of the United Nations, is neither absolute nor unlimited. The immunity from legal process accorded to experts on missions, in Article VI of the Convention on the Privileges and Immunities of the United Nations, is strictly functional in respect of words spoken or written, and acts done by them in *the course of the performance of their mission*. Malaysia is a party to the Convention without reservation and has enacted enabling legislation to give effect thereto. A Malaysian national was a member of the Commission on Human Rights when Dato' Param Cumaraswamy was appointed. A Malaysian national was the Chairman of the Commission on Human Rights when Dato' Param Cumaraswamy initiated his investigation of the Malaysian judiciary and asked the Chairman to bring his concerns to the attention of the Prime Minister of Malaysia. In its resolution 1997/23 of 11 April 1997, the Commission on Human Rights, fully aware of the circumstances leading to the civil suits against him in Malaysia, decided to renew and extend Dato' Param Cumaraswamy's mandate as Special Rapporteur of the independence of judges and lawyers for another three-year term.

Pursuant to Section 34 of the Convention, Malaysia has an obligation to give effect to the terms of the Convention. Pursuant to Section 30 of the Convention, the advisory opinion of the International Court of Justice shall be accepted as decisive by the parties. The International Court of Justice and the Economic and Social Council have called upon the Government of Malaysia to give effect to its international legal obligations in this regard. Malaysian law itself stipulates that the Minister for Foreign Affairs may give a certificate in writing certifying any fact relating to a question whether a person is entitled to any privileges and immunities. Malaysian law further provides that a certificate given under this section of the law is evidence of the facts certified. Therefore, the Government's intervention, by issuing such a certificate, to give effect to Dato' Param Cumaraswamy's immunity from legal process, as upheld and required by the Convention, the advisory opinion of the International Court of Justice and Economic and Social Council resolution 1999/64, would be in accordance with both Malaysian and international law.

(*Signed*) Kofi A. **Annan**